NASPO ValuePoint
PARTICIPATING ADDENDUM

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

Master Agreement #: AR3107 Minnesota Contract # 178976

Contractor: **INTERNATIONAL BUSINESS MACHINES CORP.**

Participating Entity: **STATE OF MINNESOTA**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor's Cloud Solutions 2016-2026 page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This Participating Addendum (herein referred to as the capitalized terms "Participating Addendum", "Addendum" or "Contract") covers ***Cloud Solutions*** led by the State of Utah for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. The NASPO ValuePoint Master Agreement is also referred to by the capitalized terms "Master Agreement" or "Agreement" within this Participating Addendum.

   Capitalized terms shall have the same meaning as defined in the Master Agreement unless otherwise defined herein.

   Participation:
   This Participating Addendum to the Master Agreement may be used upon approval from the State Chief Procurement Official by all authorized state agencies and CPV members as defined in Minnesota Exhibit A. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. The Contractor will accept Orders, Statement of Work documents and related agreements consistent with the scope of the Contract from the Office of MN.IT Services. CPV Members as defined in Section 1 of Minnesota Exhibit A may utilize the Contract subject to the Requirements of Minnesota Exhibit A and Minnesota Exhibit B, which are attached and made part of this Contract. The State reserves the right to add additional eligible State Agencies and CPV Members to this Contract upon mutual agreement by both parties.

2. Effective Date and Contract Period:

   This Contract shall be effective June 1, 2020, or on date of contract execution, whichever is later, to June 30, 2022, or 24 months after the date of contract execution, with the option to extend up to 75 months, or upon termination of the Contract or the Master Agreement for any reason, whichever is sooner.

   Orders may be placed under this Addendum for the period commencing upon the Effective Date and ending on the earliest of (i) September 15, 2026, (ii) the date of expiration or termination of the Master Agreement, or (iii) the date of expiration or termination of this Addendum.

3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Karen Schneider
Address:	US Contracts Team, 7100 Highlands Pkwy, Smyrna, GA 300820-4859
Telephone:	720-397-5563
Fax:	N/A
Email:	kasch@us.ibm.com

Participating Entity

Name:	Matt Hassenstab
Address:	Office of State Procurement 50 Sherburne Avenue, Suite 112 St. Paul, MN 55155
Telephone:	651-201-2431
Fax:	651-297-3996
Email:	Matt.Hassenstab@state.mn.us

4. Participating State Modifications or Additions to the Master Agreement

These modifications or additions apply only to actions and relationships within the Participating State.

a. Orders:

i. Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from the Master Agreement must include the Minnesota Contract number on the PO or ordering document in order to be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement, as modified by this Contract or supplemented by an Ordering Document signed by the parties, unless the parties to the order agree in writing that another contract or agreement applies to such order. The PA is not a purchase order, nor does it guarantee any purchases will be made.

ii. Orders and payments may be made directly to IBM. Orders are to be submitted as directed to IBM's sales representative. After the contents of an Ordering Document have been mutually agreed upon, IBM and the Purchasing Entity shall sign the Ordering Document, and payments shall be submitted in accordance with such Ordering Document and applicable IBM invoice. Any terms and conditions agreed upon in the Ordering Document, including Order-specific data security requirements, shall be enforceable under this Contract unless such terms and conditions are in conflict with the terms of this Contract or are in conflict with Minnesota law.

b. Governing Law and Jurisdiction:

This Addendum is governed by the substantive and procedural laws of Minnesota and Participating Entity, Purchasing Entity, and IBM agree to submit to the exclusive jurisdiction of, and venue in, the state or federal courts with competent jurisdiction in Ramsey County, Minnesota, without regard to its choice-of-law provisions.

c. Joint Venture and Subcontracting.

The State does not preclude joint ventures or subcontracting among groups of vendors in providing services for this Contract. However, with respect to any joint venture, the Contract Vendor must submit an affidavit on behalf of all the others in the group as proof of the legally responsible party among the members of the group.

The Contract Vendor shall not, without prior written approval of the State, subcontract for the performance of any of the Contract Vendor's obligations in a Statement of Work without first obtaining the State of Minnesota, Office of State Procurement's approval, except that prior approval shall not be required for subcontractors that are not a material portion of the services, are not exclusively dedicated by the Contract Vendor to the State, and are not on the State's site ("Shared Subcontractors").

The provisions of the Contract shall apply with equal force and effect to all subcontractors engaged by the Contract Vendor and approved by the State. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contract Vendor for timely and satisfactory performance of the obligations contemplated by the Contract.

If subcontractors other than Shared Subcontractors will be used for a Statement of Work, Contract Vendor will identify a list using the following format and receive approval from the State of Minnesota, Office of State Procurement to perform certain Contract Vendor obligations:

Subcontractor Name, Primary Contact and Address	**Proposed Scope of Services**

During this Contract, if an approved subcontractor other than a Shared Subcontractor is determined to be performing unsatisfactorily by the State, the State reserves the right to withdraw its prior authorization and provide Contract Vendor with written notification that the subcontractor can no longer be used to perform work under this Contract.

e. <u>Authorized Signature</u>

The Contract must be fully and properly executed by an officer or other authorized representative of the responder. If the responder is a corporation, a secretarial certificate or the corporate minutes showing that the signing officer has authority to contractually obligate the corporation should be furnished. Where the corporation has designated an attorney-in-fact, the power of attorney form should be furnished. If the responder is a partnership, a letter of authorization should be furnished signed by one of the general partners. A sole proprietor must sign the response. Proof of authority of the person signing the response must be furnished upon request.

f. <u>Order of Precedence</u>

The order of precedence between the Participating Addendum, the Master Agreement and other applicable documents is as set forth in Attachment A, Section 1(a) of the Master Agreement. For clarification, the term "IBM Ordering Document" may also apply to a separate Statement of Work or licensing agreement agreed upon in writing and signed by the parties in conjunction with the purchase of IBM cloud services or related professional services.

In the event that any provision of this Contract or the NASPO Master Agreement or an IBM Ordering Document is contrary to Minnesota law, such provision shall be null and void. This Contract shall be governed by Minnesota law.

The NASPO ValuePoint Solicitation CH16012 for Cloud Solutions 2016-2026 and Contractor's response to this Solicitation (as incorporated into the Master Agreement) may be used to inform the scope of the Agreement and the Contract.

The terms of the Contract, the Master Agreement and duly executed IBM Ordering Documents shall be read as cumulative and complimentary to the extent possible, with direct conflicts resolved in favor of the Contract.

g. <u>Discount Changes</u>

No discount reductions are allowed unless approved by the Lead State for the NASPO Master Agreement and adopted by the State of Minnesota through a fully executed amendment to this Contract.

5. Entire Agreement:

a. By placing an order under this Contract, each Purchasing Entity agrees that this Contract and any agreement or information that is incorporated by written reference into this Contract or the applicable ordering document (including reference to information contained in a URL or referenced policy), together with the applicable ordering document, are the complete agreement for the Services ordered by such Purchasing Entity and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Services. No financial obligation of the Participating State and/or any Purchasing Entity shall be affected by any change to information contained in a URL or referenced policy, nor will any additional material obligations be placed on the Participating State and/or any Purchasing Entity as a result of any such changes.

b. It is expressly agreed that the terms of this Contract and any IBM order shall supersede the terms in any IBM click-through agreement, any purchase order, procurement internet portal or any other similar non-IBM document and no terms included in any such click-through agreement, purchase order, portal or other non-IBM document shall apply to the Services ordered. Any IBM order may not modify, diminish or derogate the terms of Contract or add additional terms and conditions without prior written approval the Minnesota Office of State Procurement.

c. The Terms and Conditions of Minnesota Exhibit A and Exhibit B which are attached and incorporated into this Contract, modify and supplement the Master Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Contractor: **International Business Machines Corporation**	**State of Minnesota** **Office of State Procurement:** **In accordance with Minn. Stat.§ 16C.03, Subd. 3.**
Signature(s): DocuSigned by: KA Schneider 57D3F4927D58417...	Signature: DocuSigned by: Matt Hassenstab 6005AE573CD4486...
Name: KA Schneider	Name: Matt Hassenstab
Title: NASPO Program Manager	Title: AMS
Date: 6/24/2020	Date: 6/25/2020
	State of Minnesota **Commissioner of Administration:** **Or delegated representative**
	Signature: DocuSigned by: Andy Doran 68D02A26D7604BA...
	Name: Andy Doran
	Title: IT Acquisitions Supervisor
	Date: 6/25/2020

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

Minnesota Exhibit A

Minnesota General Terms, Conditions, and Specifications

1. DEFINITIONS.

a. **CPV Members.** The Cooperative Purchasing Venture (CPV) program was established by Minn. Stat. § 16C.03, subd. 10, which authorizes the commissioner of the Minnesota Department of Administration (Commissioner of Administration) through its Office of State Procurement (OSP) to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities" with one or more governmental units and other entities as described in Minn. Stat. § 471.59, subd. 1 and Minn. Stat. § 16C.03, subd. 10. Based on this authority, the Commissioner of Administration enters into a joint powers agreement that designates OSP as the authorized purchasing agent for the governmental unit or other entity. Governmental units and other entities joining the program are given an access code which identifies them as CPV members and permits them to access the OSP website to get information about commodities and/or services available on the State of Minnesota (State) contracts. Governmental units and other entities who are not members of the CPV program are not authorized to use the contract prices. The Contract Vendor agrees to provide the contract to CPV members at the same prices, terms, conditions, and specifications. For additional information, visit the OSP website at www.mmd.admin.state.mn.us.

b. **State Agencies.** This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.021.

c. **Ordering Entity.** This term applies to any State Agency or CPV Member when allowed in the Participating Addendum.

d. **State and State of Minnesota.** These two terms apply to the Minnesota Department of Administration, Office of State Procurement (OSP), representing the State of Minnesota as the contracting agency for the Participating Addendum. These terms also apply to the State's Office of MN.IT Services when acting within its statutorily defined contracting capacity.

e. **State of Minnesota, Office of MN.IT Services.** Minnesota's Information Technology agency. The Office of MN.IT Services is responsible for providing or entering into managed services contracts for the provision, improvement, and development of business application software and related technical support services and other information technology systems and services to Minnesota state agencies pursuant to Minnesota Statute section 16E.016(a).

f. **Contract Vendor and Contractor.** These two terms apply to the awarded vendor from the NASPO ValuePoint Master Agreement that OSP selects to receive a Participating Addendum.

g. **Contract.** Contract is defined as the Minnesota Participating Addendum, which incorporates the terms of the NASPO ValuePoint Master Agreement.

h. **Master Agreement.** Master Agreement is defined as the corresponding NASPO ValuePoint Master Agreement between NASPO ValuePoint and the Contractor.

i. **Online Services.** Online Services that may be supplied under this Contract include online services, hosting services, cloud services, and related services listed in or incorporated into the NASPO ValuePoint Master Agreement, as amended.

2. **STATE AUDITS** (Minn. Stat. § 16C.05, Subd. 5). IBM will comply with Minn. Stat. § 16C.05, Subd. 5, as applicable to the specific performance of this Contract, to the extent permitted by Minnesota law.

3. **ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Participating Addendum resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.

4. **INSURANCE.** If applicable, prior to execution of the Participating Addendum, the Contract Vendor will be required to provide a copy of a Certificate of Insurance, including workers' compensation insurance coverage requirements of Minn. Stat. § 176.181 subd. 2, and other coverages per the insurance requirements if included in the Participating Addendum and per the insurance requirements of Section 16 of the Master Agreement.

5. **INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY.** Indemnification and Limitation of Liability shall be governed by Sections 13 and 44.f, respectively, of Attachment A to the Master Contract, and Section 5.c of Exhibits 1, 2, and 3, of the Master Agreement, as applicable.

   For clarification and not as a limitation, the Contract Vendor hereby expressly extends, in addition to the other terms, conditions and specifications of the Contract, the foregoing defense and indemnification obligations under the Contract to any Cooperative Purchasing Venture (CPV) Members using the Contract, including Board of Trustees of the Minnesota State Colleges and Universities, in addition to Agency as defined in Minn. Stat. 16.C.02, in addition to the legislative and judicial branches and constitutional offices of state government.

6. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations applicable to its performance of obligations under this Contract, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.

7. **GOVERNMENT DATA PRACTICES.** The Contract Vendor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contract Vendor and all data provided to the State by the Contract Vendor. In addition, the

Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the State. The State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the State.

8. **RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.

9. **GOVERNING LAW.** The Contract will be construed in accordance with and performance governed by the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract shall be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota.

10. **JURISDICTION AND VENUE.** The Contract, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of the Contract or breach thereof shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. The Contract Vendor voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of the Contract, or any breach thereof.

11. **HUMAN RIGHTS/AFFIRMATIVE ACTION.** The State requires affirmative action compliance by its Contract Vendors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

    a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of goods and/or services, where the amount of your response is in excess of $100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the State estimated total value of the contract exceeds $100,000 whether it will be a multiple award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the State estimated total contract amount exceeds $100,000 and the Contract Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, the Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600 that had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months must have a certificate of compliance issued by the commissioner of the Department of Human Rights (certificate of compliance). A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 that did not have more than

40 full-time employees on a single working day during the previous 12 months within Minnesota but that did have more than 40 full-time employees in the state where it has its principal place of business and that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.

b. Minn. Stat. § 363A.36, subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of the Department of Human Rights (commissioner) as indicated by a certificate of compliance. Minn. Stat. § 363A.36 addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

c. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552-5000.3559.

d. Disabled Workers. Minn. R. 5000.3550 provides the Contract Vendor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

a. The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

f. Consequences. The consequences of a Contract Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.

g. Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

12. EQUAL PAY CERTIFICATION. If this Contract could be in excess of $500,000, the Contract Vendor must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A Contract Vendor is exempt if it has not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where it has its primary place of business. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us. See Minnesota Exhibit D for more details and to complete Equal Pay Certification.

13. PAYMENT. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The Ordering Entity is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate Ordering Entity. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the Ordering Entity before payment will be issued.

Conditions of Payment. The Contract Vendor's performance under the Contract must be in accordance with the Contract as determined by the sole discretion of the State's Authorized Representative and be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Minnesota Secretary of State. The Contract Vendor will not receive payment for goods or services found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

14. PURCHASE ORDERS (PO). The State requires that there will be no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Contract number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract. The parties may agree through a Statement of Work to apply additional order-specific invoicing procedures when appropriate for the type of service ordered.

15. PURCHASING CARDS. Contract Vendor will accept a purchasing card for order placement in addition to accepting a purchase order, without passing the processing fees for the purchasing card back to the State. The State's single purchase limit is $5,000 on the purchasing card.

16. TAXES. DO NOT add sales tax to the prices being offered. Unless otherwise instructed by the State, agencies will pay all applicable taxes directly to the Department of Revenue. Per Department of Revenue Tax Fact Sheet 142, State agencies are not required to submit an ST3 form to their suppliers. See website at http://www.revenue.state.mn.us.

If orders are issued by Cooperative Purchasing Venture (CPV) Members, the Contract Vendor should confirm all of the tax requirements with the ordering entity.

17. SHIPPING REQUIREMENTS. All shipments shall be FOB Destination. Freight charges shall be prepaid and allowed unless otherwise stated in the NASPO ValuePoint Master Agreement.

18. DEFAULT. All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery. No substitutions or cancellations are permitted without approval of the Ordering Entity. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the Ordering Entity to cancel the purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be removed from the vendor's list, suspended or debarred from receiving a Contract for failure to comply with the terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

19. ASSIGNMENT. The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's Authorized Representative, except that assignment of Contract Vendor's right to receive payments is not restricted and does not require approval by the State. Such consent shall not be unreasonably withheld. If practicable and as permitted by applicable law, the Contract Vendor shall give written notice to the State's Authorized Representative of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the Contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement includes reassignment of the

Contract due to a change in ownership, merger, or acquisition of the Contract Vendor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contract Vendor's right to assign the Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain liable for all performance required and provided under the terms and conditions of the Contract.

20. INTELLECTUAL PROPERTY RIGHTS AND INTELLECTUAL PROPERTY INDEMNIFICATION. Applicable when Contract Vendor or an approved subcontractor is developing intellectual property for the State under a Statement of Work or Work Order.

(a) *Pre-Existing Intellectual Property Rights.* State and Contract Vendor shall each retain ownership of, and all rights, title, and interest in their own pre-existing intellectual property and all derivative works arising therefrom, including works of authorship delivered to the State, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works).

(b) *Intellectual property rights.* Except as set forth in Section 20(a), the State will own the copyright in works of authorship that Contract Vendor develops for the State under a Statement of Work (SOW) (Project Materials). Project Materials exclude Existing Works. Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. Contract Vendor grants the State an irrevocable (subject to the State's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. Contract Vendor retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

(c) *Obligations*

(1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contract Vendor, including its employees and subcontractors, in the performance of this Contract, the Contract Vendor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

(2) Representation. The Contract Vendor warrants that any materials or products provided or produced by the Contract Vendor or utilized by the Contract Vendor in the performance of the Contract will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. The Contract Vendor must perform all ads, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contract Vendor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contract Vendor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. In the event of any such claim by any third party against the State, the State shall promptly notify the Contract Vendor.

(3) The Contract Vendor's indemnification obligations with respect to Intellectual Property are as set forth in Section 13.b. Indemnification – Intellectual Property of Attachment A to the NASPO Master Agreement.

21. PARTICIPATING ADDENDUM AMENDMENTS. Except as provided herein, the Participating Addendum shall be modified only by written amendment duly executed by an authorized representative of the State and the Contract Vendor. No alteration or variation of the terms and conditions of the Participating Addendum shall be valid unless made in writing and signed by the parties as required by law. Every amendment shall specify the date on which its provisions shall be effective. An approved Participating Addendum amendment means one approved by the authorized signatories of the Contract Vendor and the State as required by law.

22. TERMINATION OF THE PARTICIPATING ADDENDUM. Either party may terminate this Participating Addendum or any related Statement of Work at any time (i)with cause if the other party is in material breach of the Contract, provided the one who is not complying is given notice and reasonable time to comply or (ii) without cause upon 30 days written notice.

In the event of any such termination, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services performed, and any applicable and necessary costs incurred, as set forth in a Statement of Work. If the State terminates the Contract for default or other cause the Contract Vendor shall provide a pro-rated refund to the State for all prepaid but unused fees, less any applicable and necessary costs incurred set forth in a Statement of Work.

In the event the Contract Vendor is in default, the Participating Addendum is subject to immediate cancellation to the extent allowable by applicable law, except that any Ordering Documents issued hereunder will remain in effect and may be cancelled in accordance with their terms.

In the event of expiration, termination or cancellation of the Participating Addendum or Statement of Work for any reason the Contract Vendor shall, in accordance with the State's directions: (1) continue to provide any then-existing Services for as long as the State needs to transfer its data, software, security credentials including, but not limited to, any account root or access keys, and other assets to an alternate service or service provider; and/or (2) transfer the account with its existing IT environment and security credentials to the State or to a new third-party contract vendor of the State's choosing while minimizing service disruption. The Contract Vendor will be entitled to pro-rata payment at the pricing in effect prior to expiration, termination or cancellation of the Participating Addendum or Statement of Work for the continuing services for the period of time needed, subject to any other limitations within this Participating Addendum and other agreements between the State and the Contract Vendor.

The Contract Vendor may request to cancel the Participating Addendum or any related Statement of Work but must receive written approval from the State. Any term or condition that allows the Contract Vendor to terminate the Contract for any or no reason (i.e., termination for convenience) is null and void.

23. ADMINISTRATIVE PERSONNEL CHANGES. After execution of this Participating Addendum the State must be notified of intended changes in the Contract Vendor's primary contacts, as identified in Section 3 of the Participating Addendum, as soon as practicable.

24. PUBLICITY. Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Office of State Procurement.

The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of the Contract without the prior written consent of the State's Assistant Director or designee of the Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

25. AMERICANS WITH DISABILITIES ACT (ADA). Products provided under the Contract must comply with the requirements of the Americans With Disabilities Act (ADA). The Contract Vendor's catalog and other marketing materials utilized to offer products under the Contract must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contract Vendor agrees that the customer can assume the product meets or exceeds the ADA requirements.

26. NONVISUAL ACCESS STANDARDS. Pursuant to Minn. Stat. § 16C.145, the Contract Vendor shall comply with the following nonvisual technology access standards:

a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;

b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;

c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards are not applicable for installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

27. **USAGE REPORT.** The Contract Vendor is required to furnish usage data to the State's Authorized Representative on a quarterly basis based on the state fiscal year which begins on July 1. The quarter periods are July 1 to September 30 (1st Quarter), October 1 to December 31 (2nd Quarter), January 1 to March 31 (3rd Quarter), and April 1 to June 30 (4th Quarter). The report on the Contract usage must consist of the total dollars expended by both State Agencies and CPV members. Such report shall be in format required by NASPO Master Agreement. Failure to provide these reports may result in Contract cancellation. The State may request additional periodic or ad-hoc reports as necessary upon 30 days' notice and no more than once annually.

28. **MINNESOTA REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** On a quarterly basis, the Contract Vendor shall return to the Department of Administration, Office of State Procurement, a fee of 1% (.0.01 multiplication factor) of the total sales during that quarter, to assist with the cost of administering the Participating Addendum. The administrative fee shall be remitted to the State within 30 days of the end of the quarter. The quarter periods are July 1 to September 30 (1st Quarter), October 1 to December 31 (2nd Quarter), January 1 to March 31 (3rd Quarter), and April 1 to June 30 (4th Quarter). The Contract Vendor must provide a report detailing the total sales to State Agencies and CPV Members. The report must be submitted with the check on or before the required 30 days after the end of the quarter

29. **SEVERABILITY.** If any provision of the Contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions; if the remainder of the Contract is capable of performance it will not be affected by the declaration or finding and will be fully performed.

30. **ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE.** In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.

31. **COPYRIGHT.** The Contract Vendor's indemnification obligations with respect to Intellectual Property are as set forth in Section 13.b. Indemnification – Intellectual Property of Attachment A to the NASPO Master Agreement.

32. **SURVIVABILITY.** The following rights and duties of the State and Contract Vendor will survive the expiration or cancellation of the resulting Contract(s). These rights and duties include, but are not limited to the paragraphs on Indemnification, Hold Harmless, and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Intellectual Property Indemnification, Publicity and Minnesota Reporting Requirements and Administrative Fees. Software licenses, warranty, maintenance agreements and service agreements that were entered into under the terms and conditions of the Agreement shall survive the expiration or termination of this Agreement.

33. PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED. Not applicable

34. IT ACCESSIBILITY STANDARDS.

The State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 which can be viewed at: https://mn.gov/mnit/government/policies/accessibility/.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software/products/subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.
When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact and/or improve the product's/service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

35. E-VERIFY CERTIFICATION. For services in excess of $50,000, the Contract Vendor certifies that as of the date of services performed on behalf of the State, the Contract Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. This is required by Minnesota Statutes Section 16C.075. The Contract Vendor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available on OSP website www.mmd.admin.state.mn.us.

All subcontractor certifications must be kept on file with the Contract Vendor and made available to the State upon request.

36. HAZARDOUS SUBSTANCES. To the extent that the goods to be supplied to the State by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

37. SUBCONTRACTOR PAYMENT (When Applicable). In accordance with Minn. Stat. § 16A.1245, the Contract Vendor shall pay, less any retainage, within 10 calendar days of the prime Contract Vendor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and is required to pay interest of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

38. SOFTWARE AND LICENSING AGREEMENTS. Prior to the State signing any ordering document and upon request at other times, Contract Vendor must submit to the State for approval any license agreements, maintenance agreements, or any other documents pertinent to the products and/or services in this Participating Addendum.

39. TAXPAYER IDENTIFICATION: The Contract Vendor shall be registered as a vendor to the State in the SWIFT Procurement System. Registration must be done online at http://www.mmb.state.mn.us/vendorresources.

40. STATE'S NON-INDEMNIFICATION. Nothing herein, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Contract Vendor, Contract Vendor's subcontractors, or Contract Vendor's agents. This shall extend to all agreements related to the subject matter of this Participating Addendum, and to all terms subsequently added, without regard to order of precedence.

41. ORDERING ENTITY. The Contract Vendor will accept Orders and Statement of Work documents from the Office of MN.IT Services, and from eligible CPV members upon supplying the required Security Disclosure to such CPV Members. The State reserves the right to add additional State Agencies and CPV members, as defined in General Terms and Conditions section 1.Definitions, to the Contract upon mutual agreement by both parties.

42. SECURITY DISCLOSURE TO CPV MEMBERS. As part of any Contract Vendor's proposal/quote and prior to purchase, the Contract Vendor must provide written notice to any Cooperative Purchasing Venture (CPV) entity purchasing cloud services. The notice must state that the State makes no assurance of the security and protection of their data in the Cloud Computing environment. The State encourages entities to conduct their own risk analysis prior to using this Contract. The written notice must be signed by the entity acknowledging receipt of the notice and the reseller must retain the signed written notice for a minimum period of six (6) years after the purchase. The signed written notice, or copy, must be made available to the State, including the Office of MN.IT Services, upon request. The State has developed the written notice document, which is attached herein as Minnesota Exhibit B. The Contract Vendor is not required to provide notice to and obtain signature from the same entity more than once within the term of this contract for a particular cloud service. The Contract Vendor is not required to provide notice to the Office of MNIT Services.

43. SECURITY AND DATA PROTECTION.
This section applies to Orders placed under this Contract in addition to the data security and data protection provisions of the Master Agreement.

a. State Data:

When providing Cloud Services or Professional Services Contract Vendor will protect and secure all State Data as set forth in the Contract, in accordance with Order-specific requirements of the Ordering Document and in accordance with applicable law.

"Data" or "State Data" has the meaning of "government data" in Minnesota Statutes section 13.02, subdivision 7.

"Not public data" has the meaning in Minnesota Statutes section 13.02, subdivision 8a.

In the event Contract Vendor receives a request to release any State data, Contract Vendor must immediately notify the State's data practices compliance official. The State will give Licensor instructions concerning the release of the data to the requesting party before the data is released. Contract Vendor must comply with the State's instructions. The civil remedies of Minnesota Statutes section 13.08 apply to the release of the data by Contract Vendor.

All State data shall be remitted in a mutually agreeable format to the State by the Contract Vendor upon request or upon completion, termination or cancellation of the Agreement. The foregoing sentence does not apply if the State Chief Information Security Officer or delegate authorizes in writing the Contract Vendor to sanitize and/or destroy the data and Contract Vendor certifies in writing the sanitization and/or destruction of the data. Within ninety days following any remittance of State data to the State, Contract Vendor shall, unless otherwise instructed by the State in writing, sanitize and/or destroy any remaining data and certify in writing that the sanitization and/or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at Contract Vendor's sole cost and expense.

Contract Vendor agrees that any and all State Data will be stored, processed, and maintained solely on designated logical servers and dedicated logical space SAN servers and that no such data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that storage medium is in use as part of the Contract Vendor's designated backup and recovery processes.

b. Monitoring and Support Locations.
During the term of the Contract, Contract Vendor will locate all monitoring and support of all the Cloud Services only in the continental United States.

c. Security Audits & Remediation:
Contract Vendor will audit the security of the systems and processes used to provide any and all Cloud Services, including those of the data centers used by Contract Vendor to provide any and all Cloud Services to the State in accordance with the terms of the Master Agreement and this Contract except that:

(1) Any reference to a Service Organization Control (SOC) 2 audit shall mean Service Organization Control (SOC) 2 Type II.

d. Compliance with Data Privacy and Security Laws and Standards.

Contract Vendor will work cooperatively with the State to help identify data security requirements and appropriate controls and solutions appropriate to each Order, and the parties will agree to the appropriate standards and specifications in the Ordering Document.

When applicable to the State data and the cloud services ordered and when so specified in an Ordering Document, Contract Vendor will:

(i) Upon Contract Vendor review and concurrence, comply with all requirements, restrictions, and conditions that apply to the Office of MN.IT Services in the July 1, 2018, MNsure Data Sharing Contract, and as superseded or amended. This document and its successor versions are fully incorporated herein.

(ii) Comply with the Health Insurance Portability Accountability Act ("HIPAA"), the HITECH Act, and other similar privacy laws. Contract Vendor also shall comply with the HIPAA Privacy Rule, HIPAA Security Rule, and other similar rules, regulations, and laws, including future amendments thereto.

(iii) Comply with all applicable requirements, restrictions, and conditions set forth in the Criminal Justice Information Services ("CJIS") – Security Policy, Version 5.8, dated 6/1/2019, including, but not limited to, conducting FBI fingerprint background checks on all of Contract Vendor's agents, employees, and subcontractors that have or will have access to Criminal Justice Information ("CJI").

(iv) Acknowledge that for the purposes of this Contract when storing, processing, transmitting or otherwise accessing State date subject to the Family Educational Rights and Privacy Act ("FERPA"), it is designated as a "school official" with "legitimate educational interests" in State data and associated metadata, as those terms have been defined under FERPA and its implementing regulations, and Contract Vendor agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Contract Vendor shall use State data only for the purpose of fulfilling its duties under the Contract and it will not monitor or share such data with or disclose it to any third party except as provided for in this Contract, as required by law, or as authorized in writing by the State. By way of illustration and not of limitation, Contract Vendor will not use such data for Contract Vendor's own benefit and, in particular, will not engage in "data mining" of such data or communications, whether through automated or human means, except as necessary to fulfill its duties under this Contract, or as specifically and expressly provided for in this Contract, as required by law, or authorized in writing by the State. Contract Vendor agrees, upon request, to provide the State with a written summary of the procedures Contract Vendor uses to safeguard State data.

(v) All of Contract Vendor's systems and components that process, store, or transmit Cardholder Data shall comply with the most recent version of the Payment Card Industry Data Security Standard ("PCI DSS") promulgated by the PCI Security Standards Council, currently available online at: https://www.pcisecuritystandards.org/document_library. The Contract Vendor shall, upon request, provide the State with Contract Vendor's current Attestation of

Compliance signed by a PCI QSA ("Qualified Security Assessor"). For purposes of this sub-section, "Cardholder Data" has the meaning defined by the PCI Security Standards Council, Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS), Glossary of Terms, Abbreviations, and Acronyms, currently available online at: https://www.pcisecuritystandards.org/document_library.

(vi) Comply with IRS Publication 1075, Exhibit 7, which is incorporated herein.

(vii) Maintain a provisional Authority to Operate (ATO) at the Moderate Level from the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB) or Federal Agency for any and all Cloud Services provided under this Contract.

(viii) Maintain an ISO 27001 Certification for any and all Cloud Services provided under this Contract.

e. Exceptions to Contract Vendor Terms and Conditions.

In addition to all other exceptions agreed to in the Master Agreement and this Contract:

(i) To the extent that incorporation of the IBM Data Processing Agreement or other Cloud Agreements or Policies into this Agreement places any requirements on the State, the State only agrees to such requirements to the extent consistent with Minnesota law.

(ii) With respect to the IBM Business Associate Agreement (BAA) that is part of the Master Agreement, neither the State nor MNIT as defined in this Contract are Covered Entities. An individual state agency may meet the definition of Covered Entity, subject to confirmation by the state agency. Any such Covered Entity may choose to enter into a separate BAA directly between that Covered Entity and the Contract Vendor, which will supersede the aforementioned IBM BAA when signed by both parties.

44. AUDIT COSTS. If the State is required to pay Contract Vendor's audit and collection costs, and/or attorney's fees, the State is only required to pay such costs and/or fees up to an aggregate of $5,000.

45. NO AUTOMATIC RENEWALS. The State does not agree to any automatic renewals which require the payment of additional fees.

46. NO MANDATORY MEDIATION OR ARBITRATION. Any term or condition that requires the parties to mediate or arbitrate is null and void. Voluntary dispute resolution procedures are valid to the extent allowed by law.

47. TERMS AND CONDITIONS LIMITED BY MINNESOTA LAW. The State only agrees to the terms and conditions of the Contract to the extent permitted by Minnesota law.

48. STATE'S RIGHTS AND REMEDIES CUMULATIVE. All rights and remedies provided in the Contract are cumulative and not exclusive of any other rights or remedies that may be available to the State, whether provided by law, equity, statute or otherwise.

49. CONTRACT VENDOR DISCLAIMERS OF WARRANTIES INVALID. Reserved.

50. DATA DISCLOSURE. Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contract Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contract Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

51. DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES, OR POLITICAL SUBDIVISIONS
Contract Vendor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contract Vendor's certification is a material representation upon which the Contract award was based. Contract Vendor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

52. PROFESSIONAL/TECHNICAL (P/T) SERVICES
For eligible Minnesota state agencies utilizing this contract, Professional/Technical Services **must** be within the scope of services available through the Master Agreement. State agencies **must** request, in writing, and obtain prior written approval from the State's Department of Administration, Office of State Procurement (OSP) before proceeding with projects.

53. RETAINAGE. Under Minn. Stat. § 16C.08, subd. 2 (10), for Professional and Technical services performed under the terms of this Contract, no more than 90 percent of the amount due for those Professional and Technical Services may be paid until the final product has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contract Vendor has satisfactorily fulfilled those Professional and Technical Services.

54. FEDERAL FUNDS. Payments under this Contract may be made from federal funds obtained by the State. The Contract Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements. Contract Vendor is at all times acting as a contractor and not as a subrecipient, as those terms are defined in 2 CFR 200.

55. ROOT ACCOUNT OWNERSHIP. The State shall own all root accounts created under this Contract and shall have sole possession of root account keys. Contract Vendor shall provide the root account keys to the State upon creation of applicable services under this Contract.

56. ORGANIZATIONAL CONFLICTS OF INTEREST

To the best of IBM's knowledge, execution and performance of this Contract does not give rise to a Conflict of Interest (as defined below). Each party agrees to promptly notify the other if, at any time during the term of this agreement, either party becomes aware that it has an actual or potential conflict of interest, including any relationship that may impair the party's objectivity or ability to perform its obligations hereunder (a "Conflict of Interest"). Upon such notice, the parties will meet and engage in good faith negotiations to resolve the alleged or potential conflict in accordance with the dispute resolution provision set forth in Section 10 of the Master Agreement ("Defaults and Remedies"). If the parties are unable to resolve the conflict after a reasonable time, the parties may mutually agree to terminate this Addendum in accordance with Section 7 of the Master Agreement ("Termination").

In addition to the terms and conditions set forth in Section 21.a of the Master Agreement ("Fees and Taxes"), the parties hereby agree to insert the following sentences at the end of such subsection 21.a:

"Reimbursement of expenses related to the Provision of Professional Services, if any, shall be in accordance with the terms and conditions of the relevant Order and/or exhibit thereunder. In the event that the relevant Ordering Document does not include specific amounts or caps on expenses, the applicable Purchasing Entity shall not be liable to pay any expenses not explicitly agreed to in writing prior to the expenses being incurred."

In addition to the terms and conditions set forth in Section 32 of the Master Agreement ("Transition Assistance"), upon termination and upon a Purchasing Entity's written request, IBM will provide a Purchasing Entity with a confirmation that the Purchasing Entity's "Your Content" in the Services Environment has been deleted, sanitized or rendered permanently inaccessible.

In addition to the terms and conditions set forth in Section 44.b.i of the Master Agreement ("Service Specifications"), the parties hereby agree to insert the following sentence at the end of such subsection:

"The terms of payment for such additional quantity to account for the Purchasing Entity's excess usage shall be in accordance with Section 21.a of the Master Agreement ("Fees and Taxes")."

Except for actions for nonpayment or breach of IBM's proprietary rights, no action, regardless of form, arising out of or relating to this Addendum may be brought more than six years after the cause of action has accrued.

57. IMMIGRATION STATUS CERTIFICATION

IBM agrees to comply with the Immigration Reform and Control Act of 1986 ("IRCA") in relation to all employees performing work in the United States. IBM does not knowingly employ person in violation of the United States immigration laws. As of the date of this Addendum, IBM has implemented the E-Verify program for all newly hired U.S.-based employees who will perform work on this Addendum in the United States. In connection with orders of Professional Services under this Addendum, IBM will include this clause or a substantially equivalent clause in all of its subcontracts issued under this Addendum and shall obtain the State of Minnesota-Immigration Status Certification from all subcontractors performing services under this Addendum and maintain such certifications for inspection by the Participating State if such inspection is requested by the Participating State. If IBM is not in compliance with this section and has not cured its non-compliance within 30 days of written specification of such non-compliance from the Participating State, the Participating State reserves the right to determine what action it may take, including but not limited to terminating this Addendum (in accordance with Section 10 of the Master Agreement) and/or suspending or debarring IBM from state purchasing in accordance with and subject to Minnesota law.

GENERAL INSURANCE REQUIREMENTS

The Contractor/Contract Vendor (Contract Vendor) shall maintain insurance to cover claims which may arise from operations under this Contract. No Insurance minimums below lessen the coverage required by the NASPO Cloud Services Master Agreement.

The Contract Vendor shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contract Vendor shall maintain such insurance in force and effect throughout the term of the Contract.

All coverages and limits shall remain in force and effect throughout the term of the Contract.

NOTICE TO THE CONTRACT VENDOR:

The failure of the State of Minnesota to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contract Vendor to provide such insurance.

The Owner reserves the right to immediately terminate the Contract if the Contract Vendor is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the Contract Vendor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

NOTICE TO INSURER:

The Contract Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

REQUIREMENTS FOR THE CONTRACT VENDOR:

The Contract Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contract Vendor's performance under this Contract.

If Contract Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Contract Vendor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contract Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice, in which case IBM shall provide 30 days' prior written notice of cancellation or non-renewal to the State of Minnesota.

The Contract Vendor is responsible for payment of Contract related insurance premiums and deductibles.

If the Contract Vendor is self-insured, a Certificate of Self-Insurance must be attached.

Insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the MN Department of Commerce if they are not rated by AM Best.

The Contract Vendor's Umbrella or Excess Liability insurance policy may be used to supplement the Contract Vendor's policy limits to satisfy the full policy limits required by the Contract.

POLICY REQUIREMENTS:

1. **Workers' Compensation Insurance:**

   Statutory Compensation Coverage. Except as provided below, Contract Vendor must provide Workers' Compensation insurance for all its employees and in case any work is subcontracted, Contract Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Minimum limits of liability:

   Coverage B – Employer's Liability

   $100,000 Bodily Injury by Disease per Employee

   $500,000 Bodily Injury by Disease Aggregate

   $100,000 Bodily Injury by Accident

   If Minn. Stat. § 176.041 exempts the Contract Vendor from Workers' Compensation insurance or if the Contract Vendor has no employees in the State of Minnesota, the Contract Vendor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes the Contract Vendor from MN Workers' Compensation requirements.

   If during the course of the Contract the Contract Vendor becomes eligible for Workers' Compensation, the Contract Vendor must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

   Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

2. **Automobile Liability Insurance:**

   The Contract Vendor shall maintain insurance to cover liability arising out of the ownership, operation, use or maintenance of all owned, hired and non-owned autos, and in case any work is subcontracted the Contract Vendor will require the subcontractor to maintain Automobile Liability insurance.

   A. Minimum Limits of Liability:

   $2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit

   B. Coverages:

   X Owned Automobile

   X Non-owned Automobile

   X Hired Automobile

   Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

3. **General Liability Insurance:**

   The Contract Vendor shall maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contract Vendor or by a subcontractor or by anyone directly or indirectly employed by the Contract Vendor under the Contract.

A. Minimum Limits of Liability:

$2,000,000 - Per Occurrence

$3,000,000 - Annual Aggregate

$3,000,000 - Annual Aggregate applying to Products/Completed Operations

B. Coverages

X Premises and Operations Bodily Injury and Property Damage

X Personal & Advertising Injury

X Blanket Contractual

X Products and Completed Operations

X State of Minnesota named as an Additional Insured

Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):

This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

- $2,000,000 – per claim or event;
- $2,000,000 – annual aggregate; and
- The Cloud Minimum Insurance Coverage for Low, Moderate and High Risk Data as required by Section 16(b)(2) of the Master Agreement

Any deductible will be the sole responsibility of the Contractor.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work, as long as such coverage remains commercially available in the marketplace. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

State of Minnesota Named as an Additional Insured under General Liability and Auto Liability Policies

Insurance certificate holder should be addressed as follows:

State of Minnesota

Department of Administration

50 Sherburne Avenue

Room 112

St. Paul, MN 55155

Minnesota Exhibit B

NOTICE FROM THE STATE OF MINNESOTA ON THE SECURITY OF IT CLOUD SERVICES

This document serves as notice from the State of Minnesota and _______________,a Contract Vendor with a Master Contract under the NASPO ValuePoint Cloud Solutions Contract 2016-2026 and authorized to sell under a State Participating Addendum (Contract) to members of the Cooperative Purchase Venture (CPV) program (Minn. Stat. § 16C.03, subd. 10). Authorized Contract Vendor(s) may sell "cloud" technology and services. (For additional information on the meaning of the terms cloud, see definitions from the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), available at: http://csrc.nist.gov/publications/nistpubs/800-1 45/SP800-145.pdf)

You are receiving this notice because you or your organization have been provided or will be provided a proposal or quote from the above named Contract Vendor for Cloud Hosting Service(s). The particular product(s)/service(s) is/are: ____.

This document serves as notice of the following: UNLESS OTHERWISE STATED, THE STATE OF MINNESOTA MAKES NO ASSURANCES OR WARRANTIES AS TO THE SECURITY AND/OR PROTECTION OF YOUR ORGANIZATION'S DATA IN THE PRODUCT/SERVICE'S CLOUD COMPUTING ENVIRONMENT, WHICH MAY OR MAY NOT INCLUDE TRANSMITTING, STORING, AND/OR PROCESSING YOUR ORGANIZATION'S DATA OUTSIDE THE UNITED STATES. THE STATE RECOMMENDS THAT YOUR ORGANIZATION CONDUCT ITS OWN RISK ASSESSMENT/ANALYSIS PRIOR TO PURCHASING THE PRODUCT/SERVICE, INCLUDING, BUT NOT LIMITED TO, DETERMINING THE PUBLIC/NOT PUBLIC CLASSIFICATION OF THE DATA UNDER STATE AND FEDERAL LAWS TO BE TRANSMITTED, STORED, AND/OR PROCESSED IN THE PRODUCT/SERVICE'S CLOUD COMPUTING ENVIRONMENT.

Please note: the Contract Vendor is not required to provide this notice to your organization more than once within the total term of the Contract for a particular product or service. This means you will not receive this notice again for the same product/service.

With my signature below I hereby acknowledge, with the full authority to do so, receipt of this notice on behalf of my entire CPV member organization. Prior to signature and proceeding with purchase, the State recommends sharing this notice with and consulting with your organization's chief information officer, chief information security officer, or equivalent incumbent.

Signature: ___________________________ Date: ___________________________

Printed Name: _________________________ Title: ___________________________

CPV Member Organization Name: ____

Please return signed version to the above named Contract Vendor if you wish to proceed with the purchase. The Contract Vendor must retain the signed written notice for a minimum period of six (6) years after the purchase.

MNsure Data Sharing Agreement

This Data Sharing Agreement ("Agreement") is by and between the Minnesota Insurance Marketplace a/k/a MNsure ("MNsure") and the Office of MNIT Services ("MNIT").

WHEREAS, MNIT provides information technology services, management, and security to state agencies pursuant to Minnesota Statutes, Chapter 16E, and the parties will enter into a Service Level Agreement ("SLA") as to those responsibilities.

WHEREAS, MNsure is subject to the Minnesota Government Data Practices Act by Minnesota Statutes, section 62V.06, subdivision 1.

WHEREAS, MNsure and MNIT are authorized to enter into this Agreement by Minnesota Statutes, section 62V.05, subdivision 1(b)(5).

Agreement

1. Term of Agreement

1.1 ***Effective date:*** January 1, 2018, or the date the State obtains all required signatures, whichever is later.

1.2 ***Expiration date***: June 30, 2020, or until all obligations have been satisfactorily fulfilled, or until any applicable statutory authority expires, whichever comes first.

2. Information Covered by this Agreement

2.1 Under this Agreement, MNsure will share with MNIT one or more types of private information, collectively referred to as "protected information," concerning individuals, employers, and/or employees participating in MNsure. "Protected information," for purposes of this Agreement, may include any or all of the following:

2.1.1 Private data (as defined in Minn. Stat. § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. Chapter 13;
2.1.2 Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ("HIPAA"), 45 C.F.R. § 160.103);
2.1.3 Federal Tax Information ("FTI") (as defined by IRS Publication 1075);
2.1.4 Records (as defined by the Privacy Act of 1974, 5 U.S.C. § 552a); and
2.1.5 Other data subject to applicable State and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

3. Duties

3.1 MNsure Duties. MNsure shall:

(a) Only release or disclose information which it is authorized by law or regulation to share with or disclose to MNIT.
(b) Obtain any required consents, authorizations, or other permissions that may be necessary for it to share information with or disclose information to MNIT.
(c) Notify MNIT of limitations, restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect MNIT's use or disclosure of protected information.
(d) Not request MNIT to use or disclose protected information in any manner that would not be permitted under law if done by MNsure.
(e) Comply with all MNIT information security policies and standards as applicable to MNsure in accordance with Minnesota Statutes section 16E.03, subdivision 7.
(f) Identify the classification of any data shared with MNIT, and specify any applicable laws, rules, and regulations and any unique handling requirements.
(g) Notify MNIT of any future amendments to the Final Exchange Privacy Rule at 45 C.F.R. §155.260, or any amendments to other applicable laws, rules, or regulations.

3.2 MNIT Duties. MNIT shall:

(a) Be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of MNsure. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 2, and having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentially, integrity, and availability of any electronic protected health information at rest and in transit that it creates, receives, maintains, or transmits on behalf of MNsure.
(b) Comply with the minimum "necessary" access and disclosure rule set forth in the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minn. Stat. § 13.05 subd. 3.
(c) Report to MNsure any privacy or security incident regarding the information of which it becomes aware. For purposes of this Agreement, "Security incident" means the unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or including, but not limited to, improper and/or unauthorized use or disclosure of Protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be made in writing and submitted to MNsure immediately and in no case more than 7 days after learning of such incident.
(d) Unless provided for otherwise in this Agreement, if MNIT receives a request to release the information referred to in paragraph 2, MNIT must promptly notify MNsure. MNsure will give MNIT instructions concerning the release of the data to the requesting party before the data is released.
(e) Not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.

(f) Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

(g) To the extent that any protected information is PHI:

1. Comply with the minimum necessary rule and limit the collection, creation, use, maintenance, and disclosure of PHI to what is "necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." Minn. Stat. § 13.05, subd. 3. See also, 45 C.F.R. §§ 164.502(b) and 164.514(d).
2. Report any breach or security incident pursuant to the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E). This report must be in writing and sent to MNsure not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least:
   (A) Identify the nature and date of the non-permitted use or disclosure;
   (B) Identify the PHI used or disclosed;
   (C) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure;
   (D) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures;
   (E) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and
   (F) Provide such other information, including any written documentation, as MNsure may reasonably request.
3. Document disclosures of PHI and information related to such disclosures as would be required for MNsure to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
4. To the extent that MNIT uses or discloses PHI to provide health care-related administrative services on behalf of MNsure and is a "Business Associate" as defined by HIPAA, MNIT further agrees to:
   (A) Make available PHI in accordance with 45 C.F.R. § 164.524.
   (B) Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.
   (C) Comply with the limited disclosure rules set forth in the HITECH Act of 2009, HIPAA, and the MGDPA. To the extent possible, disclosures should be in a limited data set, which is largely information with the patients' identifying information removed, "to the extent practicable." Pertinent identifiers include, name and social security number; street address, e-mail address, telephone and fax numbers; certificate/license numbers; vehicle identifiers and serial numbers; URLs and IP addresses; full face photos and any other comparable images; or medical record numbers, health plan beneficiary numbers, and other account numbers. If a limited data set is not feasible, or does not meet the use or disclosure, minimum necessary should be applied. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." Minn. Stat. § 13.05 subd. 3. See also, 45 C.F.R. § 164.514, 45 C.F.R. §§ 164.502(b) and 164.514(d).

(D) Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of PHI available to MNsure and/or the Secretary of the United States Department of Health and Human Services (HHS) for purposes of determining compliance with the Privacy Rule and Security Standards, subject to attorney-client and other applicable legal privileges.

(E) Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. In accordance with Minnesota Statutes chapter 16E.03, subdivision 7, develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws.

(F) Designate a privacy official to be responsible for the development and implementation of its policies and procedures as required by 45 C.F.R. Part 164, Subpart E.

(h) To the extent that any MNsure Protected information is FTI, ensure that the FTI is only used as authorized under the Patient Protection and Affordable Care Act, the Internal Revenue Code, 26 U.S.C. § 6103(C), and IRS Publication 1075, Exhibit 7, including compliance with the following requirements:

I. Performance

1. All work will be done under the supervision of MN.IT or its employees.
2. MN.IT and its employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of the SLA. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract the SLA. Disclosure to anyone other than an officer or employee of MN.IT will be prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
5. MN.IT certifies that the data processed during the performance of this contract will be completely purged from all data storage components of its computer facility, and no output will be retained by MN.IT, if the SLA is terminated at the time the work is completed. If immediate purging of all data storage components is not possible, MN.IT certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to MNsure or his or her MNsure or its designee. When this is not possible, MN.IT will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the MNsure with a statement containing the date of destruction, description of material destroyed, and the method used.
7. All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the

environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

8. No work involving Federal Tax Information furnished under the SLA will be subcontracted without prior written approval of the IRS.
9. MN.IT will maintain a list of employees authorized access. Such list will be provided to MNsure and, upon request, to the IRS reviewing office.
10. MNsure will have the right to void the contract if MN.IT fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC §§ 7213 and 7431 and set forth at 26 CFR § 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of the SLA. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need-to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of $1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC § 7213A and 7431 and set forth at 26 CFR § 301.6103(n)-1.
3. Additionally, it is incumbent upon MN.IT to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, 5 U.S.C. § 552a(i)(1), which is made applicable to contractors by 5 U.S.C. § 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of

his/her employment or official position, has possession of or access to MNsure records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

4. Granting a contractor access to FTI must be preceded by certifying that each individual understands the MNsure's applicable security policy and procedures for safeguarding IRS information. MN.IT employees must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the MNsure's files available for review. As part of the certification and at least annually afterwards, MN.IT employees must be advised of the provisions of IRC §§ 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

1. The IRS and MNsure, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of MN.IT to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where MN.IT is found to be noncompliant with contract safeguards.

(i) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.

(j) Comply with any and all other applicable provisions of the Final Exchange Privacy Rule at 45 C.F.R. § 155.260, including future amendments thereto.

(k) To the extent MNIT refers data requestors to MNsure for response and makes the requested data available to MNsure for redacting and fulfilling the response, MNIT will not be in breach of section 3.2(d) & (g)(4)(A-C) of this Agreement.

4. **Disposition of Data upon Completion, Expiration, or Agreement Termination.** Upon completion, expiration, or termination of this Agreement, and in the absence of a new data sharing agreement, MNIT will return to MNsure or destroy all Protected information received or created on behalf of MNsure for purposes associated with this Agreement. A written certification of destruction or return to the MNsure Authorized Representative is required. MNIT will retain no copies of such Protected information, provided that if both parties agree that such return or destruction is not feasible, or if MNIT is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, MNIT will extend the protections of this Agreement to the Protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as MNIT maintains the information.

5. Amendments

Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office with delegated authority, if applicable.

6. Liability

The parties agree that each is independently responsible for complying with statutes, rules, and/or regulations governing or affecting the collection, storage, use, sharing, disclosure, and dissemination of protected information in accordance with this Agreement. Neither party will be liable for any violation of any provision of applicable laws or the terms of this Agreement indirectly or directly arising out of, resulting from, or in any manner attributable to actions of the other party or its employees or agents. The liability of state agencies is governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.

7. Sanctions.

In addition to any liability under section 6 of this Agreement, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to Protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

8. Termination

Either party may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party.

1. Office of MNIT Services	**2. MNsure**
By: ______ (With delegated authority)	By: ______ (With delegated authority)
Title: State CIO	Title: COO
Date: 12-21-2017	Date: 12/26/2017

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/22/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Aon Risk Services Northeast, Inc.
One Liberty Plaza
165 Broadway, Suite 3201
New York, NY 10006

CONTACT NAME:
PHONE (A/C, No, Ext): +1 (866) 283-7122 FAX (A/C, No): +1 (800) 363-0105
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	ACE American Insurance Company	22667
INSURER B :	North American Capacity Insurance Co	25038
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

INSURED
International Business Machines Corp.,
including Merge Healthcare Incorporated, Red Hat, Inc.,
and any other Subsidiary Corp Owned or Controlled by the Insured
One New Orchard Road
Armonk, NY 10504
United States

COVERAGES **CERTIFICATE NUMBER:** 482398 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			HDO G71445653 (USA)	5/21/2020	5/21/2021	EACH OCCURRENCE	$ 15,000,000
	CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 10,000,000
		X					MED EXP (Any one person)	$ 25,000
							PERSONAL & ADV INJURY	$ 15,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 15,000,000
	X POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$ Included
	OTHER:							$
A	AUTOMOBILE LIABILITY	X		ISA H25298226 (USA)	5/21/2020	5/21/2021	COMBINED SINGLE LIMIT (Ea accident)	$ 5,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		See Page 2	See Page 2	See Page 2	X PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$ $5,000,000
							E.L. DISEASE - EA EMPLOYEE	$ $5,000,000
							E.L. DISEASE - POLICY LIMIT	$ $5,000,000
B	Professional Errors & Omissions Liability & Cyber Liability	N/A	N/A	5110.1	11/1/2019	11/1/2020	Per Claim Aggregate	$10,000,000 $10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Job Description / Project Name / Project Number: IBM NASPO Cloud Master Agreement #: AR3107

The policies listed above are not intended to replace locally mandated (statutory) insurance policies in various countries, other than the USA.

Please see next page for any additional language.

CERTIFICATE HOLDER
State of Minnesota
Dept. of Administration
Materials Management Division
50 Sherburne Ave., #112
St. Paul, MN 55155
United States

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Authorized Representative:
Aon Risk Services Northeast, Inc.
Aon Risk Services Northeast, Inc.

ACORD®

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Aon Risk Services Northeast, Inc. One Liberty Plaza 165 Broadway, Suite 3201 New York, NY 10006	International Business Machines Corp., including Merge Healthcare Incorporated, Red Hat, Inc., and any other Subsidiary Corp Owned or Controlled by the Insured One New Orchard Road Armonk, NY 10504 United States
	EFFECTIVE DATE: Various (see prior page)

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

EMPLOYERS LIABILITY/WORKERS COMP POLICIES

Policy Number	Eff. Date	Exp. Date	Company Affording Coverage
WA7-62D-004158-930 (MA)	1/1/2020	1/1/2021	Liberty Insurance Corporation (42404)
EL7-621-004158-920 (Puerto Rico)	1/1/2020	1/1/2021	Liberty Insurance Corporation (42404)
WC5-621-004158-150 (MN,WI)	1/1/2020	1/1/2021	LM Insurance Corporation (33600)
EW5-62N-004158-690 (Excess OH)	1/1/2020	1/1/2021	LM Insurance Corporation (33600)
WA5-62D-004158-440 (AOS) **	1/1/2020	1/1/2021	LM Insurance Corporation (33600)
83-191657 (Guam)	1/1/2020	1/1/2021	National Union Fire Insurance Company of Pittsburgh, PA (19445)
EL6-621-004158-840 (VI)	1/1/2020	1/1/2021	The First Liberty Insurance Corporation (33588)

State of Minnesota Dept. of Administration Materials Management Divisionis hereby listed as an additional insured on the Commercial General Liability Insurance Policy issued in the USA but only to the extent the interests may appear.

State of Minnesota Dept. of Administration Materials Management Divisionis hereby listed as an additional insured on the Automobile Liability Insurance Policy issued in the USA but only to the extent the interests may appear.

With respect to Voluntary Compensation and Contingent Employers Liability:
All operations incidental to the conduct of Named Insured's business in the United States of America.

If there is a question regarding this certificate please contact Eric Rice
(Email: erice2@us.ibm.com Phone: 770-863-1572)